

---

**Remarks**

Newly added claims 17-20 are supported by specification. Claims 17-19 are supported by page 9 lines 7-10 and Figure 1. Claim 20 is supported by page 9, lines 24 and 25.

Claims 1, 2 and 4-15 were rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Bishop et al., U.S. Pat. No. 5,486,166, in view of Thompson et al., U.S. Pat. No. 5,368,926, and Proxmire et al U.S. Pat. No. 5,192,606. This rejection is respectfully **traversed**.

Before addressing the foregoing rejection, the Applicants believe it would be beneficial to describe the claimed invention.

Claims 1-12 and 17-20 are directed to a surge layer of a personal care product having at least two layers, a first layer and a second layer which are bonded together. The first layer is compression resistant and is creased. The second layer has a density between 0.01 and 0.05 g/cc. Dependent claims 2-12 and 17-20 further define the features of the claimed invention, including claim 3 which specifies that a third layer is present and that the third layer has a density between 0.01 and 0.05 g/cc. Claims 13-16 are directed to personal care products including the surge layer.

Applicants point out that a surge layer is one of several layers of a personal care product. A surge layer is typically located between a body side liner and an absorbent layer and serves to temporarily contain a surge of an insulting liquid and hold that liquid until the liquid can be absorbed by the absorbent layer. The function of the surge layer is different from the function of the absorbent layer and the body side liner.

The Examiner correctly determines that Bishop et al. teaches a surge layer. However, the similarities between Bishop et al. and the claimed invention end there. Bishop et al. teaches that the surge layer is a lofty material prepared from nonwoven material. Bishop et al. does not teach that the surge layer contains a creased layer, as the Examiner has correctly acknowledged. Further, there is no teaching in Bishop et al. which would suggest to one of ordinary skill in the art that the surge layer should contain a creased material.

To remedy this deficiency of Bishop, the Examiner relies upon Thompson to show that it is known in the art to form creased surge layers. While Applicants agree that

Thompson does teach a personal care product which can have a creased or pleat-like layer. Applicants disagree that the teachings of Thompson et al render the claims obvious. The creased or pleat-like layer of Thompson is layer 27, as is shown in Figures 4 and 5 of Thompson et al., and is a fluid accepting and transporting layer. This layer is described in detail starting at column 8, line 49 of Thompson et al. In addition, a detailed description of Figures 4 and 5 appears at column 4, line 63- column 5, line 18.

In Figure 4 of Thompson et al., the creased structure is shown to be a two-layer structure. However, one layer of the structure, designated as figure numeral 38, is a tissue, as is clearly stated at column 5, line 3 of Thompson et al. The remainder of the pleated layer 27 is a nonwoven material which is prepared from a unique class of fibers called "capillary channel fibers". These fibers have highly unusual shapes, shown in Figures 6-11, that wick liquid from their surface. The nonwoven web from these fibers is on one side of the tissue layer 38.

Thompson does not teach that one of the layers of the pleat or creased layer is compression resistant, and that the other layer has a density less between 0.01 and 0.05 g/cc, as is clearly required by claim 1. The Examiner has not addressed how the tissue layer is compression resistant or has the density between 0.01 and 0.05 g/cc. In fact, the tissue layer of Thompson et al. has a density between 0.06 and 0.11 g/cc as is stated in column 5, lines 7 and 8. Further, the Examiner does not address that the density of the layer of the "capillary channel fibers" is between 0.01 and 0.05 g/cc or that the layer of the nonwoven from capillary channel fibers is compression resistant.

Turning to the dependent claims, there is no suggestion in Thompson et al. to use polyethylene/polypropylene conjugate fibers in the pleated layer 27, as is required in claim 8 or to used conjugated fibers in the second layer. Further, there is no suggestion in the combination of Bishop and Thompson to used at least a two layer surge material wherein one layer is pleated or creased and a second layer in not pleated or creased, as is required in dependent claim 17. Bishop et al. and Thompson et al. do not teach that the surge layer is a three-layer structure, as required by claim 3. Even further, there is no suggestion to have a surge layer having a three layer structure wherein both the second and third layers are not creased, as required by claims 18 and 19.

Next, the Examiner relies on the teachings of the body side liner layer of Proxmire et al. to make an obviousness rejection. Actually, the Examiner states in the rejection that it would have been obvious to substitute the body side liner of Bishop et al. with the body side

liner of Proxmire et al. However, the Examiner has not stated why one skilled in the art would have been motivated to apply the teachings and technology of the body side liner to the surge layer, which is a separate layer from the body side liner. It is again pointed out that the claims are directed to "A surge layer" or a personal care product containing the claimed surge layer.

A body side liner and absorbent layer are separate and distinct layers, having different functions in a personal care product than a surge layer. This is recognized by the Bishop reference which clearly states that the body side liner has a separate and distinct function from the surge layer. The Examiner's attention is directed to column 3, lines 7-30 of Bishop for this discussion. In short, the body side liner allows the insulting liquid to rapidly pass through the liner and away from the user. In contrast, a surge layer temporarily absorbs, holds and then distributes the liquid to the absorbent layer. A surge layer is needed since absorbent layers typically are slow in absorbing liquids, as is recognized by Bishop et al. in column 1, lines 33-45. Clearly a surge layer has a completely different function from a body side liner. Therefore, one skilled in the art would not look at the body side liner technology to solve a problem with the surge layer. Even if one skilled in the art would have been motivated to replace the body side liner of Bishop et al., with the body side liner of Proxmire et al., one skilled in the art would not arrive at the Applicants' claimed invention since the portion of Proxmire relied upon by the Examiner deals with a body side liner and not a surge layer..

In order for a combination of references to render a claim obvious, the claimed invention "as a whole", including all of the limitations of the claim must be taught by the combination of references. Given that Bishop et al., Thompson et al. and Proxmire et al. do not teach a surge layer with a compression resistant creased layer and a layer having a density between 0.01 and 0.05 g/cc, the combination of Bishop et al., Thompson et al. and Proxmire et al. fails to render the claims obvious within the meaning of 35 USC § 103. Separately, even if one skilled in the art were to modify the Bishop et al., and Thompson et al. with Proxmire et al. as suggested by the Examiner, one skilled in the art would not arrive at the claimed surge layer. Therefore, this rejection is untenable and the Examiner is respectfully requested to withdraw this rejection.

Claims 3 and 16 were rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Bishop et al., U.S. Pat. No. 5,486,166, in view of Thompson et al., U.S. Pat. No.

5,368,926, and Proxmire et al U.S. Pat. No. 5,192,606, as applied to claims 1, 2, and 4-15 and further in view of Powers U.S. Pat. No. 5,597,647. This rejection is respectfully **traversed**.

In the statement of this rejection, on page 5, second paragraph of the June 26, 2002 Office Action, the Examiner states that Bishop, Thompson, and Proxmire "disclose all the limitations of the instant claimed invention except for the material of the absorbent layer" (emphasis added). Applicants respectfully point out that an absorbent layer is not claimed in the present claims. As is noted above, absorbent personal care articles typically have a body side liner, a surge layer, and absorbent layer and an outer cover. Again see column 3, lines 7-30 of Bishop for a discussion of the different layers of an absorbent personal care article. The Applicants' present claims are directed to a surge layer of a personal care article and personal care articles containing the surge layer. Applicants are not claiming a body side liner, nor are the Applicants claiming an absorbent layer of a personal care product. The Examiner's reliance upon Powers to teach an absorbent layer in a personal care product is misplaced. There is no teaching in the art relied upon by the Examiner which would direct one skilled in the art to use the teaching of an absorbent layer to produce a surge layer, especially since the function of the absorbent layer is to hold and maintain the insulting liquid, while the function of a surge layer is to temporarily hold an insulting liquid and then release the liquid to the absorbent layer.

Therefore, the teachings of Powers do not remedy the deficiencies of the Bishop et al, Thompson et al., and Proxmire et al. This rejection is untenable and should be withdrawn.


Finally, the Examiner raises the issue that the process limitations are given little or no patentable weight. It is not necessary for Applicants to address this argument by the Examiner since the references relied upon by the Examiner do not render the claims obvious, for the reasons stated above.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 770-587-7204.


Respectfully submitted,

CREAGAN ET AL.

By:   
\_\_\_\_\_  
Ralph H. Dean, Jr.  
Registration No.: 41,550  
Attorney for Applicants

CERTIFICATE OF MAILING

I, Ralph H. Dean, Jr., hereby certify that on September 17, 2002 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

By:   
\_\_\_\_\_  
Ralph H. Dean, Jr.